

**DECISION**

24619  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-210333

**DATE:** March 24, 1983

**MATTER OF:** Naval Ordnance Station, Louisville -  
Computation of FLSA Overtime

**DIGEST:**

A union contends that employees do not receive proper credit for excused absences such as leave under the agency's computation of overtime under the Fair Labor Standards Act (FLSA). The union argues that the amount representing the paid absence should be added to the employee's FLSA entitlement for comparison with his entitlement under title 5, United States Code. The agency's computation excluding absences for holidays and leave is correct under the statutes and regulations since such absences are not considered "hours worked" under the FLSA. There is no basis to add the amount paid for leave to the FLSA computation.

The issue in this decision concerns the crediting of excused absences such as leave in determining an employee's entitlement to overtime compensation under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq. (1976). We hold that since paid absences are not considered "hours worked" under the FLSA, the computation of compensation due under the FLSA may not include remuneration for periods of nonwork, e.g., leave.

This decision is in response to a joint request from Local Lodge 830, International Association of Machinists and Aerospace Workers, and the Naval Ordnance Station, Louisville, Kentucky, which was forwarded to our Office by the Comptroller of the Navy. The request is in lieu of arbitration of the grievance concerning computation of FLSA overtime, and the request is being handled under our Labor-Management Procedures set forth in 4 C.F.R. Part 22 (1982).

The submission from the union states that three employees, Messrs. Robert M. Doerhoefer, Thomas K. Recktenwald, and Calvin J. Shindler, have filed a grievance

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over the Navy's computation of their FLSA overtime. These employees are nonexempt or covered under the FLSA and, therefore, are entitled to overtime compensation under 5 U.S.C. § 5542 (1976) or under the FLSA, whichever gives the greater benefit. See 5 C.F.R. § 551.513 (1982) and 54 Comp. Gen. 371 (1974).

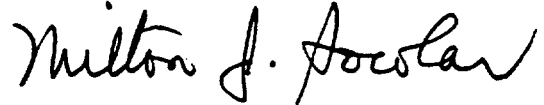
The union argues that the employees are penalized when they use leave during a workweek in which overtime is performed since the hours of leave are not included in the computation of overtime under the FLSA. For example, where an employee works 10 hours (2 hours of overtime) Monday, Tuesday, Wednesday, and Thursday, and then works 4 hours and takes 4 hours of leave on Friday, the employee's entitlement under title 5, United States Code, is for 40 hours at the basic rate and 8 hours at the overtime rate. Under the FLSA computation prepared by the Naval Ordnance Station, the employee's entitlement under the FLSA would be for 40 hours at the regular rate and only 4 hours at the overtime rate.

The union contends that the 4 hours of excused leave in this example should be added to the employee's entitlement after the FLSA computation is prepared. The union states that this total would result in a higher rate, often higher than the title 5, United States Code, entitlement. It is the union's contention that under the Navy's computation of FLSA overtime, employees are being charged leave for excused absences but are not receiving proper credit for that time under the FLSA.

Under title 5, United States Code, paid leave is deemed employment and does not reduce the amount of overtime pay to which the employee is entitled. 5 C.F.R. § 550.112(a). The FLSA computation by the Navy, however, excludes periods of excused absences (leave, holidays, etc.) from the FLSA computation. This practice is consistent with statutory provisions of the FLSA and the implementing regulations issued by the Office of Personnel Management. See 29 U.S.C. § 207(e)(2) and 5 C.F.R. § 551.511(b)(2). Under the FLSA, only those hours of work in excess of 40 hours in a workweek are compensable, and paid absences are not considered hours of work in determining whether the employee has worked more than 40 hours in a workweek. See 5 C.F.R. § 551.401(b); Louis Pohopek, 60 Comp. Gen. 493 (1981), and Christine D. Taliaferro, B-199783, March 9, 1981. As we have stated

previously, to add the amount representing the paid absence to the employee's entitlement under the FLSA would be an improper combination of the benefits provided by the FLSA and title, 5, United States Code. 60 Comp. Gen. 493, 494 (1981).

Accordingly, we conclude that the Navy's computation of overtime under the FLSA is consistent with applicable laws and regulations, and we must deny the union's claim.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General  
of the United States